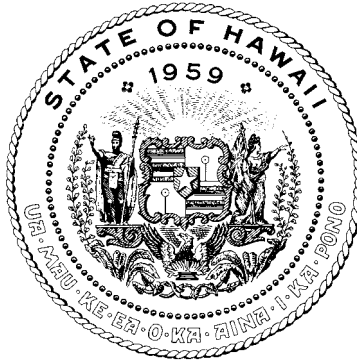


REPORT TO THE TWENTY-THIRD LEGISLATURE
STATE OF HAWAII
2006 REGULAR SESSION

REQUESTING THE DEPARTMENT OF LAND AND NATURAL RESOURCES TO
CONSIDER IMPOSING RESTRICTIONS ON PUBLIC ACCESS TO THE AHIHI-KINAU
NATURAL AREA RESERVE



PREPARED BY

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
DIVISION OF FORESTRY AND WILDLIFE

IN RESPONSE TO HOUSE CONCURRENT RESOLUTION 88 SENATE DRAFT 1

REGULAR SESSION OF 2005

HONOLULU, HAWAII
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EXECUTIVE SUMMARY

House Concurrent Resolution (HCR) 88 Senate Draft (SD) 1, adopted during the 2005 Regular Session, requested of the Department of Land and Natural Resources (Department), to consider imposing restrictions on public access to the Ahihi-Kinau Natural Area Reserve (NAR).

Ahihi-Kinau NAR is a 2,045-acre site located on the Island of Maui. It was established in 1973 as the first NAR to protect several unique natural ecosystems including:

1. The most recent ‘a‘a lava flow on Maui;
2. The most biologically intact examples of anchialine resources in Hawaii containing a very distinct assemblage of aquatic fauna, most of which are very rare, endemic, fragile, and endangered by human activities;
3. Isolated coves, fragile coral reefs, and shoreline areas that provide habitat for a high diversity of marine fauna, including many fish species, corals, and crustaceans, and offshore areas providing resting areas for spinner dolphins and turtles;

In addition, the NAR also protects numerous ancient Hawaiian archeological and cultural sites.

The beauty and uniqueness of Ahihi-Kinau’s lava fields and abundant marine life has attracted an increasing number of both visitors and local residents in recent years. In the last decade, this significant increase of visitation was mainly caused by record visitor numbers, improved access through the NAR on a paved road, and increased publicity of the area through visitor guidebooks.

The recent unmanaged over-utilization of Ahihi-Kinau’s resources resulted in considerable impacts to its unique natural assets. In order to address this issue, the Department began enforcement of the prohibition on commercial activity (kayaking) within the NAR and secured a grant through the Hawaii Tourism Authority (HTA) to hire two “Rangers” to provide an on-site Departmental presence to help educate the NAR users, deter resource violations, and gather field data and public input in order to better manage the NAR. In addition, the Department established the Ahihi-Kinau/Keoneoio Advisory Council as a way to gain public input on the planned future management of the reserve.

The Department has utilized the information gathered from the Rangers and from naturalists associated with the Hawaii Wildlife Fund (also supported by the HTA grant), as well as comments from public meetings to review the current status of Ahihi-Kinau and address the concerns brought forward by HCR 88 SD 1.

INTRODUCTION

Legislative Request

The Department has been requested by HCR 88 SD 1 (see APPENDIX 1) to immediately undertake an expedited review of the Ahihi-Kinau NAR considering the 10 action items:

- (1) Rerouting existing trails away from the anchialine pond;
- (2) Enclosing the anchialine ponds;
- (3) Expanding parking areas at the north and south ends of the NAR and prohibiting parking on the road between the parking areas;
- (4) Charging a parking fee or reserve area entry fee, while at the same time providing comfort stations, containing portable toilets and informational signs or kiosks, near the parking areas;
- (5) Setting a maximum carrying capacity for the number of persons at the “Aquarium” site and the “Fishbowl” site at any one time;
- (6) Establishing entry areas for persons entering the water at the “Aquarium” site and the “Fishbowl” site at any one time;
- (7) Prohibit public access at night;
- (8) Banning or strictly limiting any type of commercial activities in the NAR;
- (9) Prohibiting the use of kayaks or canoes, commercial or private, within the NAR;
- (10) Considering the privatization of the management and protection of the Ahihi-Kinau NAR.

Discussion on action taken by the Department on each item follows.

(1) Rerouting existing trails away from the anchialine ponds:

The major anchialine ponds in the NAR have a very well worn and historic trails (200+ years) that leads to them. The Department is interested in preserving the integrity of the lava flow as well as the ponds; therefore, attempts are being made to re-route people away from the ponds rather than re-route the trails. Any re-routing of the trails would cause significant irreversible impacts to the geology in the NAR.

Current steps being taken to direct pedestrian traffic away from the ponds include:

- Having Rangers present in the NAR to educate users and guide them away from the ponds.
 - Covering and concealing portions of trails leading to impacted ponds.
 - Beginning the process to amend current Natural Area Reserves System (NARS) rules to allow managers to reduce the number of users in sensitive areas of the NAR, or if necessary, restrict access to portions of the NAR.
 - Increasing educational and regulatory signage near ponds.
 - Developing a management plan which includes the management of pedestrian activity in the vicinity of the anchialine ponds.
- (2) **Enclosing the anchialine ponds, prohibiting public access to the ponds, and allowing access only by permitted persons:**

No action is currently being undertaken to enclose the anchialine ponds. While enclosing areas serves to protect resources in some areas, this would not be a cost-effective means of protecting the ponds in Ahihi-Kinau. All anchialine ponds are surrounded by lava therefore the construction of a fence around a pond would be extremely costly, have a significant impact on the fragile geology, and detract from the scenic values of the NAR. Additionally, tall fencing would reveal the locations of low-lying ponds in some cases, attracting curious visitors who would otherwise not be able to find the ponds.

The Department recognizes the high value of this unique resource and is committed to preserving the anchialine ponds. There are already existing rules prohibiting entry into or the disturbance of an anchialine pond in any NAR. Under Hawaii Administrative Rules (HAR) § 13-209-4(12), it is prohibited “to enter into, place any vessel or material in or on, or otherwise disturb a lake or pond.” Entry into these fragile ponds is strictly prohibited and allowed by permit only.

Current steps being taken to further protect the anchialine ponds include:

- Having Rangers present in the NAR to educate users and guide them away from the ponds.
- Beginning the process to amend current NARS rules to allow managers to reduce the number of users in sensitive areas of the NAR, or if necessary, restrict access to portions of the NAR.
- Increasing educational and regulatory signage near ponds.
- Developing a management plan which includes the management of pedestrian activity in the vicinity of the anchialine ponds.

(3) Expanding parking areas at the north and south ends of the NAR and prohibiting parking on the road between the parking areas:

No action is currently being undertaken to expand the main parking areas at the north and south ends of Ahihi-Kinau. There are two main reasons why this action has not been implemented. The first reason is that both areas have high densities of archaeological sites immediately adjacent to them. Any expansion of parking areas would likely heavily impact or destroy these sites. The second reason is that these parking areas rarely reach full capacity. Currently, there is simply no need to expand the parking areas.

In addition, the availability of parking areas often serves as a control over the number of users in an area. Recent public outcry concerning the over-utilization of the NAR has led the Department to examine the possibility of using available parking spaces in Ahihi-Kinau to control the amount of users in the NAR. A central theme in the draft management plan for Ahihi-Kinau addresses the issues of overuse through the management of available parking stalls. While this plan does not call for the expansion of the parking lots, it does propose the improvement of the central parking lot in the NAR. These improvements include grading the uneven rough high spots in the dirt parking lot and delineating parking stalls to maximize efficiency. Very similar to a plan implemented by Hanauma Bay on Oahu, this plan sets a carrying capacity for the NAR by controlling the number of available parking spaces. When all spaces are full, users will be turned away and encouraged to

return at a later time. The Department is currently working with the Ahihi-Kinau / Keoneoio Advisory Council and the general public to gather input regarding the feasibility of this management strategy in the draft management plan.

Another aspect of this management plan proposes prohibiting parking along the main road. The Department has already placed boulders alongside portions of the road between these two areas to make it harder for visitors to access sensitive areas of the NAR and to help facilitate the redirection of visitors to either one of the two parking areas on the north and south ends. Shortly violation signs will be installed and unattended cars will be towed.

The Department is continuing discussions with the County of Maui in hopes of resolving the ownership of the road or creating a memorandum of understanding between the State and the County to better enable regulating public access along the road. Preliminary advice from the Department of the Attorney General (AG's) indicates that the road is owned by Maui County.

Current steps being taken to improve parking areas and prohibit parking along the main road include:

- Having Rangers present in the NAR to direct potential roadside parking to the north and south parking lots.
- Developing a management plan which includes the improvement and delineation of parking stalls in the north parking lot.
- Developing a management plan which includes the prohibition of parking along the main road.
- Increasing regulatory signs along main road.
- Investigating historical records to determine or address road ownership issues.

(4) Charging a parking fee or reserve area entry fee, while at the same time providing comfort stations, containing portable toilets and informational signs or kiosks, near the parking areas:

The Department is currently working with the Ahihi-Kinau/Keoneoio Advisory Council to develop a long-range management plan for the NAR. One proposal has been to implement a fee system in order to supplement the funds needed for management of this reserve. Currently, the NARS lack rules to institute such a fee system. While the Department will continue to explore the institution of a fee as an option, the Department would conduct additional public meetings and have further consideration of the consequences of a fee system before making any decision to implement a fee.

Portable toilets and an informational kiosk are already being provided near the parking areas in Ahihi-Kinau. Two portable toilets are provided in both the north and south parking lot and an informational kiosk is manned four hours a day providing information to users in the north parking lot. The information kiosk is a temporary structure and is funded by a two-year grant from the HTA. Efforts to provide a permanent informational structure is proposed in the Ahihi-Kinau draft management plan.

Current steps being taken to charge user fees, provide portable toilets, and an informational kiosk include:

- Providing portable toilets in the north and south parking lots.
- Providing an informational kiosk in the north parking lot, manned 4 hours a day, seven days a week.
- Exploring the amendment of current rules to allow managers to institute a fee system.
- Developing a management plan which considers a user fee system and permanent informational facilities.

(5) Setting a maximum carrying capacity for the number of persons at the “Aquarium” site and the “Fishbowl” site at any one time:

The “Aquarium” and “Fishbowl” sites are small, protected bays made popular recently by visitor guidebooks. Popular visitor guidebooks describe these sites as the best snorkeling in Maui. Their calm, protected conditions provide the ideal conditions for breeding fish as well as coral growth, qualities which also make them extremely attractive to visitors for snorkeling. Unfortunately, their popularity has contributed to degradation of the very resource people come to see as the fragile coral has been trampled by visitors to the bays. In addition to impacting the near shore marine environment, users are also impacting fragile ‘a‘a lava in an attempt to find these bays. Vague trails leading over the lava to the “Aquarium” and “Fishbowl” sites are undeveloped and unmaintained, causing unsafe hiking conditions for the typical snorkeler who hikes across the lava in slippers and a bathing suit.

It is the Department’s understanding that the request to set a maximum carrying capacity for these two bays is intended to reduce the impacts to these areas by controlling the number of users in the bays at any one time. The Department is currently focusing its efforts on managing the number of users in the overall NAR in addition to managing the actions of each individual user. Specifically, in order to provide a safer hiking and snorkeling experience for the NAR users, the Department has been redirecting users away from the “Aquarium” and “Fishbowl” towards the waters near the north parking lot where the information kiosk is situated and where hiking and snorkeling is safer and less destructive to the marine resources.

In addition to its current redirection efforts, the Department is also addressing the overuse of the “Aquarium” and “Fishbowl” by developing a management plan for the NAR. The draft plan proposes several different options for the “Aquarium” and “Fishbowl” areas. Some options that are being considered include restricted access by permit only, access by State guided tours to the bays, and optional State tours.

In addition, the Department has conducted a series of rapid assessments to determine the impact of users on the marine resources and is working to use this biological information in conjunction with information on the total number and types of users to determine a carrying capacity for the “Aquarium” and “Fishbowl” sites.

Current steps being taken to set a carrying capacity for the “Aquarium” and “Fishbowl” include:

- Using information from the series of rapid assessments to develop a scientifically defensible carrying capacity.

Current steps being taken to reduce the impacts to these areas include:

- Redirecting users to safer and better quality snorkeling experience near the north parking lot.

- Beginning the process to amend current NARS rules to allow managers to restrict access to sensitive portions of the NAR.
- Developing a management plan which proposes several access options to these bays including restricted access by permit only, access by guided hike only, and open access with optional State guided hikes.

(6) Establishing entry areas for persons entering the water at the “Aquarium” site and the “Fishbowl” site at any one time:

As noted above in (5), the Department is currently redirecting users to safer and better quality snorkel experiences near the north parking lot and working with the Ahihi-Kinau / Keoneoio Advisory Council to develop a management plan for the NAR. Although it is believed that the improvement and signing of entry areas to these bays would educate visitors and reduce the impacts on coral due to trampling upon entry into the bays, there is a concern that these actions alone will only encourage additional use and may create additional liability by giving the appearance of approving use of these questionable snorkel areas. At the current time, the Department believes it is more appropriate to establish entry areas after the overall long-range management of the NAR has been decided.

(7) Prohibit public access at night:

The Department supports the prohibition of public access to Ahihi-Kinau at night and is currently working to amend NARS rules to enable managers to implement this action.

(8) Banning or strictly limiting any type of commercial activities in the NAR:

The Department currently bans all commercial use at Ahihi-Kinau NAR without a written special use permit from the Board of Land and Natural Resources, pursuant to HAR 13-209-4(13). Enforcement of this prohibition began April 2004. Most commercial operations have ceased at this time. The Department brought an administrative action against one operator believed to continue to operate commercial kayak tours within the NAR in August 2004; the operator requested a contested case which is near conclusion.

(9) Prohibiting the use of kayaks or canoes, commercial or private, within the NAR:

It is the Department’s understanding that this is being requested in conjunction with the proposal to restrict public access to sensitive portions of the NAR and that this would help deal with people who might try to access the closed portion by water/kayak or canoe. As noted above, the Department currently enforces the ban on commercial use without a special use permit. Under the current rules, managers do not have the authority to restrict access to any private individuals including those with kayaks or canoes. The Department is working to amend NARS rules to enable managers to restrict access to sensitive portions of Ahihi-Kinau.

(10) Considering the privatization of the management and protection of the Ahihi-Kinau NAR:

The Department has discussed the option of privatizing different aspects of Reserve management with the Ahihi-Kinau / Keoneoio Advisory Council and the general public. In general, the

Advisory Council is skeptical of any privatization in the NAR due to recent over-utilization by commercial kayak companies and the resulting ban on all commercial activity.

The Department remains interested and committed in exploring any and all possibilities for preserving this area and will further explore this as an option in the draft management plan.

Other on-going activities relating to Ahihi-Kinau NAR:

- (A) Cave Squatter – In December of 2004, it was discovered that a woman had moved her belongings into a cave at Ahihi-Kinau NAR. The Department's Division of Conservation and Resource Enforcement (DOCARE) subsequently issued her citations for three misdemeanor charges including the disturbance of geology, erecting a structure, and depositing a foreign substance. These charges were later dropped by the Maui County Prosecutor's Office stating inadequate public notice (no signs citing rules in the immediate area) and a not economical cost benefit analysis that would provide a low fine after a fairly extensive jury trial involving the presentation of over 70 pieces of State's evidence/exhibits alone. The Department's Division of Forestry and Wildlife DOFAW is currently working with the other agencies involved (DOCARE, Maui County Prosecutor's Office, and the AG's) to address this issue and secure her removal from the cave.
- (B) Cultural Resource Management Plan – In addition to protecting natural resources, Ahihi-Kinau's NAR status protects the cultural sites within its boundaries. Several sites including burial caves and ancient fishing villages are known to exist within the NAR, but due to a lack of funding, no formal surveys have been conducted. A portion of the HTA grant (awarded to the Department in 2004) will be utilized to contract a firm to survey the NAR and surrounding State lands in order to catalogue existing cultural sites and design a management plan to for their protection. This plan will later be integrated into the long-term management plan for the NAR.
- (C) La Perouse / Keoneoio Gate – La Perouse Bay (unencumbered State land and private property) is adjacent to Ahihi-Kinau's southern border. This bay is a popular recreational area utilized for fishing, surfing, hiking, and illegal camping. The heavy use of vehicles along the coastline of the bay has led to the degradation and destruction of several cultural sites along the dirt road as well as the deposition of litter and human waste from illegal camping and the widespread use of illegal ground fires. In response to repeated requests from the Ahihi-Kinau / Keoneoio Advisory Council, Rangers have begun working with the different Divisions of the Department, the Department of Hawaiian Home Lands, private land owners, the fishing community, and the general public to develop plans to reduce the impacts from vehicular use along the coastline. Initial plans have been proposed which include the use of a gate and combination lock to increase the accountability of vehicular users in the bay. In general, the plan has received support from the Advisory Council as well as the fishing community. Rangers are currently drafting a plan and memorandum of agreement with State entities and private landowners.
- (D) Boundary Buoys Installation – The marine boundaries of Ahihi-Kinau are not conspicuous and difficult to determine both by those on the land and on the water. Fishing and the use

of motorized vessels are prohibited activities in the NAR, but the courts have dismissed past violations due to improper notification in the form of boundary buoys. To remedy this issue Rangers are currently working on an environmental assessment, the first of many steps, to install boundary buoys in the waters off Ahihi-Kinau.

- (E) Need for long-term Rangers funding – Ahihi-Kinau “Rangers” have been funded by a three-year HTA grant to explore the effectiveness of establishing an on-site departmental presence. These uniformed non-enforcement individuals serve multiple purposes including:
- Informing and educating reserve users.
 - Primary responders to minor injuries and assistance for serious incidents.
 - Surveillance, assistance, and deterrents when dealing with illegal activity.
 - Departmental liaisons with the public.
 - Representatives for public meetings.
 - Service/educational trip leaders for schools, volunteer groups, and interns.
 - Producing management plans, environmental assessments, maps, and other miscellaneous reports.

These Rangers have been well received by the public and have become a necessary factor in the management of Ahihi-Kinau. In order for effective management to occur beyond 2006, it is imperative that long term funding be budgeted for these positions beyond their three-year grant period. In addition, there are currently only two Rangers serving the area seven days a week. Additional staff would increase the presence of the Rangers at the site.

CONCLUSIONS

The Department has completed an expedited review of the Ahihi-Kinau NAR and is already taking the necessary steps in order to protect and preserve this precious resource. State “Rangers” and naturalists have been hired to provide an on-site departmental presence in the area helping to educate the NAR users, deter resource violations, and gather public input.

The Department has been working with the Ahihi-Kinau / Keoneoio Advisory Council and the general public to develop a draft long-range management plan for the NAR. This plan will address issues of resource protection, user activities, funding, and education.

And finally, the Department is working to amend the current NARS rules to better enable the management and control over activities in Ahihi-Kinau.